

**MINUTES FOR A REGULAR MEETING OF THE CIVIL SERVICE COMMISSION
HELD AT 6:00 P.M., THURSDAY EVENING, DECEMBER 8, 2005
CITY COUNCIL CHAMBERS, #2 CIVIC CENTER PLAZA – 2ND FLOOR**

MEMBERS PRESENT:

Boureslan, Ali
Ellis, William - Chair
Gezelius, Ken
Graham, Elijah
Martinez, Ramy
Peña, Andrew
Ruck, Lance
Schwartz, Elma
Scott, Valerie

ALSO PRESENT:

Aguilar, Eddy	Fargo, Peter - Human Resources
Arballo, Bill – AFSCME Local 59	Fields, Kristin – Art Museum
Arellano, Jaime A. Jr.	Garcia, Claudia
Batoon, John – Assistant City Attorney	Gardon, Rafael
Brey-Casiano, Carol – Library	Gomez, Robert - Police
Brooks, Fred	Holguin, Bobby – Police
Buenning, Rosy – CSC Recorder	Martinez, Cesar
Calderon, Edmundo – Chief Internal Auditor	Mora, Oscar
Chavez, Ernesto	Nielsen, Jennifer – History Museum
Cichon, Gerald – CLEAT	Puga, Monica - Human Resources
Cuellar, Lupe – Assistant City Attorney	Thomas, Linda Ball – CSC Secretary/Interim HR Director
DeBruhl, Edward	Wiles, Chief Richard – Police Dept.
Elizondo, Lisa, Attorney at Law	Williams, Jerome
Escobedo, Carlos	

The meeting convened at 6:00 p.m. with a quorum of 9 Commissioners present and Chair Ellis presiding.

Ms. Thomas requested that Items 4B and 4C be deleted. She also told the Commission that Ms. Wilson had requested that if they were going to discuss any of the contracts that they wait until she was present as she was currently at an event next door and would probably be here around 7 o'clock.

Chair Ellis requested that Item 21 be deleted.

Commissioner Ruck requested Items 2A, 2B, 2E, 2L and 4A be moved to the Regular Agenda.

Commissioner Boureslan requested Item 2C be moved to the Regular Agenda.

Mr. Bill Arballo requested Items 8A and 9B be moved to the Regular Agenda.

Mr. Edward DeBruhl requested Item 8F be moved to the Regular Agenda.

MOTION TO APPROVE THE CONSENT AGENDA WITH THE MODIFICATIONS MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER GRAHAM AND UNANIMOUSLY PASSED.

MOTION TO TABLE ITEMS 2A, 2B, 2C, 2E AND 2L UNTIL THE ARRIVAL OF THE CITY MANAGER MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.

CONSENT AGENDA

1. Discussion and Action on Approval of Minutes:

November 10, 2005

2. Discussion and Action on Approval of Contracts:

- A. Personal Services Contract with Monica Acuña to perform the duties of Legal Secretary from November 19, 2005 through May 18, 2006, for the City Attorney's Office.

This item was addressed during the Regular Agenda after Item 16B.

Commissioner Ruck knew that Legal Secretary was a classified position.

John Batoon, Asst. City Attorney, stated that when Ms. Acuña was initially hired it was because there was no eligible list and there still isn't an eligible list for her position.

Ms. Thomas advised that within the next six months a list would be available.

Bill Arballo, AFSCME Local 59, stated he was concerned that departments are hiring employees through contracts because there are no eligible lists. He believes departments need to take action to ensure eligible lists are promulgated. He asked the Commission to scrutinize the contract requests closely for this reason.

MOTION TO APPROVE ITEM 2A MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER PEÑA AND UNANIMOUSLY PASSED.

- B. Personal Services Contract with Frederick D. Brooks to perform the duties of Engineering Technician III from December 9, 2005 through December 8, 2006, for Development Services (BP&I).

This item was addressed during the Regular Agenda after Item 16B.

Commissioner Ruck asked for the reason for this contract. He believed if the incumbent retired the department should foresee that and plan ahead.

Alan Shubert, Director for Development Services, said there is a very old list, which he considers insufficient. He told the Commission that he was advised several weeks ago of the incumbents' retirement. He advised that they certainly will advertise for the position but in the meantime would like to hire Mr. Brooks on contract. Mr. Shubert said that Mr. Brooks was a very competent inspector with about 20 years experience in inspecting and a degree in construction technology, and is also an evacuee from Hurricane Katrina. Mr. Shubert advised the Mr. Brooks had applied for other positions with the City and he saw this as an opportunity to fill an immediate need to give them time to advertise and put a list together which he expected to do within the next six months.

Commissioner Ruck questioned whether Mr. Shubert could disregard the current eligible list.

Ms. Thomas stated that the department director has a right to call for a list of five individuals and if the list is less than five he or she can request that Human Resources recruit so that an eligible list of more than five is available.

Commissioner Boureslan questioned Mr. Brooks qualifications.

Mr. Brooks stated that he had a bachelor's degree in construction technology and was a licensed contractor for highway, streets and bridges for the State of Louisiana.

Chair Ellis admonished Mr. Shubert to request the promulgation of a new list of eligibles once eligibles are under five.

MOTION TO APPROVE ITEM 2B FOR A PERIOD OF 6 MONTHS MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER GEZELIUS AND PASSED BY A VOTE OF 5 TO 3.

Ayes: Commissioners Peña, Gezelius, Boureslan, Scott, Ruck

Nays: Commissioner Graham, Martinez, Scott

- C. Cooperative Education Contract with Hayde Rivas to perform the duties of Industrial Engineer Associate I from December 13, 2005 through December 12, 2006, for Environmental Services.

This item was addressed during the Regular Agenda after Item 16B.

Commissioner Boureslan believed that the job specifications for Industrial Engineering Associate I led him to believe that the person hired should possess a bachelor's degree in industrial engineering and Ms. Rivas did not.

Assistant City Attorney Lupe Cuellar told the Commission that Ms. Rivas was being hired as an intern.

John Batoon, Asst. City Attorney, said she was not being hired as an Industrial Engineering Associate I, she is being hired as an Engineer Coop Intern and the description showed the characteristics of her class and examples of some of the duties she would have.

Assistant City Attorney Lupe Cuellar said the scope of services could be amended to reflect exactly what she would be doing and to give examples of duties. She suggested Attachment A only showing the language under "Examples of Duties" in the current specification.

MOTION TO APPROVE ITEM 2C WITH AN AMENDED ATTACHMENT "A" AS DESCRIBED ABOVE, MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER GEZELIUS AND UNANIMOUSLY PASSED.

- D. Personal Services Contract with Elizabeth Delao to perform the duties of Auditor II from December 9, 2005 through June 9, 2006, for Internal Audit.
- E. Personal Services Contract with Quinn Korbolic to perform the duties of Assistant to Transportation Planner II from January 23, 2006 through January 22, 2007, for the Metropolitan Planning Organization.

This item was addressed during the Regular Agenda after Item 16B.

Commissioner Ruck asked why the Transportation Planner II needed an assistant.

Ricardo Dominguez, MPO Transportation and Planning Manager, stated that within the MPO office there is one Transportation Planner II and five Transportation Planner I positions. He said the title might be somewhat misleading and stated that this person would be performing duties that are somewhat related to the Transportation Planner I but not as detailed. He will be developing a land-use model that is very specific.

MOTION TO APPROVE ITEM 2E MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER PEÑA AND UNANIMOUSLY PASSED.

- F. Personal Services Contract with Yolanda Chavez Leyva to perform the duties of Hispanic History Consultant from December 9, 2005 through February 23, 2006, for the Museum (History).
- G. Personal Services Contract with Phyllis Lane Price to perform the duties of Exhibit Text Writer from December 9, 2005 through February 23, 2006, for the Museum (History).
- H. Independent Services Contract with Ronald P. Fritsch to perform the duties of Instructor from January 7, 2006 through February 25, 2006, for the Museum.
- I. Personal Services Contract with Araceli Salcedo to perform the duties of Code Blue Program Coordinator from December 12, 2005 through December 11, 2006, for the Police Department.
- J. Personal Services Contract with Marlo L. Tena to perform the duties of Code Blue Program Coordinator from December 12, 2005 through December 11, 2006, for the Police Department.

- K. Personal Services Contract with Jesus Uribe to perform the duties of Victim Services Response Team Case Manager from December 12, 2005 through August 31, 2006, for the Police Department.
- L. Personal Services Contract with Juliet Lozano to perform the duties of Municipal Communications/Public Affairs Manager from December 27, 2005 through December 28, 2006, for the City Manager's Office.

This item was addressed during the Regular Agenda after Item 16B.

Commissioner Ruck wondered if Ms. Lozano would be working under Ms. Crouthers. Ms. Crouthers' contract had been approved at the last meeting.

Joyce Wilson, City Manager, said it was the opposite, Ms. Crouthers would be a subordinate of Ms. Lozano. She explained that this position was originally in the Mayor's office but was converted to the City Manager's office.

MOTION TO APPROVE ITEM 2L MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER PEÑA AND PASSED BY A VOTE OF 7 WITH 1 ABSTENTION.

Ayes: Commissioners Peña, Graham, Martinez, Gezelius, Boureslan, Scott, Ruck

Abstain: Commissioner Schwartz

3. Notice of Promulgation of Eligible Lists:

- A. Museum Preparator = Promulgated 11/02/05 (O-5)
- B. Personnel Analyst II = Promulgated 11/02/05 (P-0)(O-0)
- C. Automotive Technician Supervisor = Promulgated 11/03/05 (P-8)(O-2)
- D. EPWU Wastewater Plant Assistant Superintendent = Promulgated 11/03/05 (P-6)
- E. Budget & Management Analyst III = Promulgated 11/07/05 (P-3)
- F. Cultural Funding & Technical Asst Coordinator = Promulgated 11/07/05 (P-1)(O-3)
- G. Electronics Technician = Promulgated 11/07/05 (P-1)(O-5)
- H. Airport Labor Supervisor = Promulgated 11/14/05 (P-4)
- I. Building Maintenance Worker II = Promulgated 11/14/05 (P-29)
- J. Labor Foreman I = Promulgated 11/15/05 (P-10)(CR-1)
- K. Labor Foreman II = Promulgated 11/22/05 (P-14)
- L. Marketing & Cultural Tourism Coordinator = Promulgated 11/22/05 (P-2)(O-8)
- M. Water Utility Engineer Associate = Promulgated 11/22/05 (P-2)(O-4)
- N. Senior Citizen Program Representative = Promulgated 11/22/05 (P-1)(O-3)

4. Discussion and Action on Approval of Classification Actions:

New Job Class/Revised Job Class/Revised Job Class & Grade/Revised Job Class, Title & Grade

	<u>Title</u>	<u>Code</u>	<u>Grade</u>
A.	Proposed: Department Administrative Manager	5348	PM 81

This item was addressed at the beginning of the Regular Agenda.

Commissioner Ruck asked what the intent of this item was. He wondered how many people were going to be hired under this title and for what departments and where the positions would fall, under the Department Heads or under the Assistant Department Heads. He also wondered if Police and Fire were asking for this position.

Daryl Cole, Steet Department Director, stated that as far as his department is concerned, the position would be just under the Assistant Director. He knew other departments had been working on this job spec as well.

Ms. Thomas stated that Fire was probably going to get this position, Police was not. She said not all City departments were getting these, probably 4 positions total.

MOTION TO APPROVE ITEM 4A MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER BOURESLAN AND UNANIMOUSLY PASSED.

- | | | | |
|----|---|--------------|----------------|
| B. | Official: Police Sergeant
Proposed: Same | 7561
Same | P4
Same |
| C. | Official: Police Lieutenant
Proposed: Same | 7562
Same | P5
Same |
| D. | Official Deputy City Clerk
Proposed: Same | 5328
Same | PM 76
PM 78 |
5. Discussion and Action on request to assign pending appeal cases:
- A. McLellan, Myron – Termination – Public Transit
 - B. Viescas, Marta – Suspension – Fire Dept.
 - C. Muñoz, Gabriel – Termination – Public Transit
6. Discussion and Action on request to have name placed on Transfer List:
- Avila, Alejandro – Engineering Technician IV – Engineering Dept.
7. Discussion and Action on request to have name placed on Reinstatement List:
- A. Lorusso, Noel – Training Technician/Instructor – Police Dept.
 - B. Salgado, Alejandro – Automated Refuse Collection Oper – Environmental Svcs
8. Discussion and Action on Request for Temporary Promotion:
- A. Molina, Heriberto - Airport
From: Custodial Worker
To: Shuttle Bus Operator

This item was addressed at the beginning of the Regular Agenda.

Bill Arballo wondered if there was a conflict between this item and Item 9B which was a request to extend the Custodial Worker eligible list.

Ms. Thomas told the Commission that due to the incumbent being out on leave the position being temporarily filled was Shuttle Bus Operator.

MOTION TO APPROVE ITEMS 8A AND 9B MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER GEZELIUS AND UNANIMOUSLY PASSED.

- B. Del Pino, Alicia – General Services
From: Information Processor Operator
To: Automotive Maintenance Ticket Writer
- C. Hernandez, Miguel Jr. – Environmental Services
From: Personnel & Accounting Clerk
To: Refuse Collection Division Supervisor
- D. Leyva, Michael – Environmental Services
From: Assistant Route Foreman
To: Welder
- E. Delgado, Lorraine – Municipal Court

From: Deputy Court Clerk I
To: Cashier II

F. From: Coach Operator
To: International Coach Operator

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| 1. Arellano, Francisco J. | 11. Martinez, Hector |
| 2. Betancourt, Juan Manuel | 12. Martinez, Vicente |
| 3. Camacho, David | 13. Pando, Fernando |
| 4. Chavez, Ignacio | 14. Payan, Rodolfo |
| 5. Del Valle, Isela | 15. Ramirez, Sr., Armando |
| 6. Escobedo, Carlos | 16. Reyes, Jr., Marcos |
| 7. Galaviz, Jose Francisco | 17. Ruvalcaba, Roberto J. |
| 8. Gomez, Eduardo Soto | 18. Vazquez, Hector M. |
| 9. Gomez, Rodolfo Domingo | 19. Walsh, James |
| 10. Hernandez, David | 20. Willie, Jose Luis |

This item was addressed at the beginning of the Regular Agenda.

Mr. DeBruhl said that he had never seen any documentation in reference to any problem which may arise for these International Coach Operators. He believed Sun Metro should advise these employees of the positive and negative aspects of being an International Coach Operator. He said he also applied but his name wasn't on this list.

Commissioner Ruck recalled that this issue had come before the Commission about one year ago where they had a long discussion about the department being able to do this. He even recalled them talking about the extra board, about the problems that driver's might encounter, etc..

Terry Lee Scott, Director of Public Transit, stated that they did discuss this about a year ago when he told the Commission that once they were further down the road with the negotiations with Cd. Juarez, State of Chihuahua and the Mexico City federal government they would come back to the Commission. He stated that these 20 Coach Operators are volunteers and they have applied for passports for them and then Sun Metro will also apply for a visa for them to work in Cd. Juarez. They are also working on various documents between the two cities, some of the issues in those documents are very sensitive as to what happens to the drivers while they are in Mexico. He said they also have a lawyer in Juarez that is helping them with this issue. He advised that beginning the first of the year they are going to recruit for permanent positions. He said that Mr. DeBruhl was welcome to submit his name if he wanted to volunteer.

Mr. DeBruhl said this was the first that he had heard this information and wanted the information prior to applying. He also wondered if Workman's Comp would be provided if they were injured in Mexico.

Commissioner Boureslan wondered if these drivers were going to be trained on the traffic laws in Mexico and if they have an accident in Juarez how they are going to resolve the problem.

Mr. Scott stated that these drivers will be trained in International Law and signage as far as driving is concerned. They have attorneys and insurance in Mexico specifically for that, and they will have the ability to send a supervisor into Mexico to deal with an accident and to provide as much protection as possible in the international agreement between the two cities.

MOTION TO APPROVE ITEM 8F MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER GRAHAM AND UNANIMOUSLY PASSED.

9. Discussion and Action on Request for Extension of Eligible Lists for an additional six months:

- A. Airport Materials Specialist – Extended through 07/23/06
- B. Custodial Worker – Extended through 07/14/06

This item was addressed at the beginning of the Regular Agenda.

See motion in Item 8A.

- C. Police Word Processor – Extended through 07/21/06
- D. Toll Collector – Extended through 07/15/06

10. Discussion and Action on Request for Approval of Police Trainee, Certified Police Trainee and Police Officer Eligible Lists prior to Appeals being heard and decided by Commission.

REGULAR AGENDA

Items 4A, 8A, 8F and 9B were addressed at the beginning of the Regular Agenda.

11. A. Discussion and Action of Notice of Resignation from Hearing Officer Roberta Cross.

MOTION TO ACCEPT ROBERTA CROSS' RESIGNATION MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER SCHWARTZ AND UNANIMOUSLY PASSED.

- B. Discussion and Action on selection of replacement Hearing Officer.

Chair Ellis reminded the Commission that during the time when the Commission was considering hiring outside legal counsel a few months back they had received resumes from various interested attorneys. He wondered if one of the Commissioners would propose hiring one of those attorneys, Chris Borunda, to fill the position of Hearing Officer. He had information that she would be interested and she was certainly qualified.

Discussion.

MOTION TO APPROVE A CONTRACT FOR CHRIS BORUNDA FOR A PERIOD OF SIX MONTHS MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER GRAHAM AND UNANIMOUSLY PASSED.

MOTION TO APPROVE THE CONTRACT FOR CHRIS BORUNDA AT THE CURRENT RATE PAID TO HEARING OFFICERS MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER SCHWARTZ AND UNANIMOUSLY PASSED.

- 12 Discussion and Action on Appeal of Denial of Reinstatement:

Rubalcava, Martin – Toll Collector – Street Dept. (Tabled 10/13/05)

Commissioner Ruck asked if Mr. Rubalcava had been provided the information he requested through the Texas Open Records Act and if this was the same person who had previously appealed his performance evaluation.

Daryl Cole, Street Director, stated that the answer to both questions was yes.

MOTION TO TABLE ITEM 12 TO THE FIRST MEETING IN MARCH WITH AN ALTERNATE POSTING FOR THE 2ND MEETING IN MARCH MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.

13. Discussion and Action on Letter to Civil Service Commission from Jaime Arellano, Jr. reference Violations of Rules 27 and 28 dealing with Safety and Discrimination.

Assistant City Attorney Lupe Cuellar asked Mr. Arellano if this was a grievance. She said that the purpose of her question was to determine whether or not the Commission had jurisdiction on this matter.

Mr. Arellano said it was not a grievance, it was a complaint.

Assistant City Attorney Lupe Cuellar wanted to know under what mechanism of the Civil Service was this matter before the Commission. If Mr. Arellano believed there was a violation of rules, the proper procedure would be to file a grievance and go through that process. She wasn't sure if the item was properly before the Commission.

Chair Ellis believed they needed to hear from Mr. Arellano in order to make that determination.

Commissioner Ruck said that safety is a big concern of management and asked if there are locations that are now locked and if there are drivers working during the locked hours and if they are, where do they go to use the restroom.

Mr. Scott stated that this was a temporary situation that occurred because of a contract changeover in security. As of December 1st at 6 a.m. they are back to 100% in their security force. He advised that the drivers have a covert alarm system that they can activate on their own that activates at the Police Department and at Sun Metro when they have an emergency situation. He advised that they have automatic vehicle locators that allows them to find a bus within 3 meters of their actual location. Covertly they have a microphone which is activated so that they can hear everything on the bus. All bus drivers have radios to send messages. A driver at any time throughout his entire route can call the dispatcher and say that they are stopping at one of various locations to use the restroom.

Commissioner Boureslan asked Ms. Cuellar if this was a complaint if it was properly posted.

Assistant City Attorney Lupe Cuellar said there were two ways that employees could get items before the Commission. The first was through the grievance process which was not followed in this case. The second was for someone to prefer charges which needs a sworn complaint. She said that either way the proper procedures had not been followed in this case.

Chair Ellis believed they could devote a reasonable amount of time to the people who brought this concern forward and then determine what should happen from there.

Mr. Arellano said that he clearly listed the reasons why he bypassed management in this case. He said that when he filed this they have been without security for ten days and he was extremely fearful for his safety at night. He believed that Sun Metro has a safety policy, which they are not complying with. He said this was clearly a violation of Rules 27 and 28 regarding safety and discrimination.

Carlos Escobedo stated he was a coach operator and told the Commission that one thing that should not be jeopardized is security. He said they are provided with videos and that members from Washington come to teach them safety. He said that buses are the main target for bombs and that security and police cannot be jeopardized, even if it is from 6 p.m. to 6 a.m., they need security 24 hours per day.

Chair Ellis stated that the Commission has been told that the matters have been resolved and didn't believe there was any action they could take.

Discussion.

MOTION TO DELETE ITEM 13 MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER RUCK AND UNANIMOUSLY PASSED.

14. Discussion and Action on Committee Report & Recommendation on grievance filed by Eddy Aguilar, Parks & Recreation.

Commissioner Martinez read the committee's recommendation which was:

"Recommendation that Mr. Aguilar's appeal be Denied, with a recommendation to the Parks and Recreation Department Director to see if he can accommodate Mr. Aguilar's schedule."

MOTION TO APPROVE THE COMMITTEE'S RECOMMENDATION MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER SCOTT AND UNANIMOUSLY PASSED.

15. Discussion and Action on Hearing Officer's Report and Recommendation:

Giner, Marta – Termination – Police Dept. (CP05-100/05-PD-15PP)

Lisa Elizondo, Ms. Giner's attorney, stated that Ms. Giner was an over 20-year employee who had an impeccable record and outstanding performance evaluations up until the time she was wrongfully terminated. Ms. Elizondo asked the Commission to uphold the Hearing Officer's recommendation. She asked the Commission to review the matter of fairness and consider amending the Hearing Officer's

report by awarding attorney's fees as well. She detailed her reasons for this request.

Chair Ellis told Ms. Elizondo that he didn't believe the Commission had the authority to grant the relief Ms. Elizondo was requesting as far as awarding attorney's fees and made his ruling.

Commissioner Ruck appealed the ruling and said he wanted to hear what Ms. Elizondo had to say. The Commission voted and overruled the Chair's ruling.

Ms. Elizondo stated that the Charter in Section 6.13-6 talks generally about reinstatement. The provision reads, "The accused will be reinstated immediately and without prejudice and will not be deprived of any salary for any period of suspension preceding the hearing." She believed the term "without prejudice" was broad enough to allow for attorney's fees. She said that Section 6.13-8 governed subsequent action by the Commission by allowing them to modify a Hearing Officer's recommendation and there was absolutely no limitation on the discretion of the Commission on whether or not attorney's fees can be awarded. She requested that the Commission modify the Hearing Officer's recommendation by awarding attorney's fees as well.

Assistant City Attorney Lupe Cuellar told the Commission she wanted to give them her legal advice in Executive Session.

MOTION TO ADJOURN TO EXECUTIVE SESSION MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER PEÑA AND UNANIMOUSLY PASSED.

The Commission retired into Executive Session at 7:08 p.m. to receive legal advice on Item 15, and reconvened for Open Session at 7:21 p.m.

MOTION TO ADJOURN EXECUTIVE SESSION AND RETURN TO REGULAR SESSION MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.

Chair Ellis asked why they discussed matters at the hearing that were discussed at the pre-disciplinary hearing, contrary to Rule 15.

John Batoon, Asst. City Attorney, said that the issue was raised by the appellant with respect to issues regarding discrimination by the department on the basis of sex or gender. The issue that came up that the Hearing Officer raised was whether or not the department had notice of these complaints in the past.

Chair Ellis said they should remind the Hearing Officers to be mindful of the provisions of that rule and attorneys for the parties to be similarly mindful.

John Batoon, Asst. City Attorney, believed that the Hearing Officer based her recommendation on an erroneous application of the departmental discipline matrix that the department has. The Hearing Officer analyzed the departmental matrix and found that the matrix provided that a first time offense for insubordination called for a 5-day suspension. The Hearing Officer did note that the matrix provides for departures from those recommendations but in this case felt it was unfair. In this case Ms. Giner willfully disobeyed a direct order and CSC rules allow for discipline up to termination. He said that the department has to rely on its employees to follow direct orders. Mr. Batoon said that the City demonstrated by a preponderance of the evidence that the termination was appropriate and asked the Commission to modify the recommendation.

Chief Wiles said that in order to run his department properly he has to be able to give his employees an order and expect for them to follow it. In this case the employee didn't only fail to comply, she refused to comply. He said that the Hearing Officer sustained the issue, she found that Ms. Giner did fail to follow the direct order. He said that in his 23 + years to his knowledge he has never seen an employee who refused to comply with this type of order been allowed to continue with their employment. He believed the Hearing Officer's decision was wrong and requested that the Commission uphold Ms. Giner's termination.

Chair Ellis asked if the employee was specifically cautioned that if she refused this order she could be terminated and asked he the discipline he imposed in this case was a departure from the guidelines.

Chief Wiles said she had talked to a Deputy Chief, an Assistant Chief, but specifically in internal affairs by the investigating detective was told that she would face termination if she failed to comply with giving that statement. He said this discipline was not a departure from the guidelines. He commented that this type of behavior is rare because employees in his department know that it might result in termination. Chief Wiles reminded the Commission that there was no disparate treatment in this case.

Commissioner Ruck asked Chief Wiles why she wasn't charged with insubordination instead of just cause.

Chief Wiles told the Commission to look at page 2 of the specifications, which state the rules that the department believed the employee violated and the reasons why they believe those rules were violated.

Discussion.

MOTION TO ACCEPT THE HEARING OFFICER'S RECOMMENDATION TO REDUCE THE TERMINATION TO A FIVE-DAY SUSPENSION MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER GRAHAM AND PASSED BY A VOTE OF 5 TO 3.

Ayes: Commissioners Peña, Graham, Martinez, Gezelius, Ruck

Nays: Commissioner Boureslan, Schwartz, Scott

MOTION THAT THE CIVIL SERVICE COMMISSION DOES NOT HAVE JURISDICTION TO AWARD ATTORNEY'S FEES MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER GEZELIUS AND PASSED BY A VOTE OF 7 WITH 1 ABSTENTION.

Ayes: Commissioners Peña, Graham, Martinez, Gezelius, Boureslan, Schwartz, Scott

Abstain: Commissioner Ruck

16. Discussion and Action on Report from Committee regarding Performance Evaluation of:

A. Juarez, Rebeca – Customer Relations Clerk – Building Permits & Inspections

Commissioner Schwartz read the committee's recommendation which was to approve Ms. Juarez's PE Appeal by changing factor number 7 from Exceeds to Exceptional.

MOTION TO APPROVE THE COMMITTEE'S RECOMMENDATION MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.

B. Jimenez, Ivonne – Library Extension Services Administrator – Library

Commissioner Ruck read the committee's recommendation, which was to approve Ms. Jimenez's PE Appeal by changing Item 1 – Interpersonal Skills from a 2 to a 3.

Carol Brey-Casiano, Library Director, thanked the committee for giving Ms. Jimenez a thorough hearing. She commented that Ms. Jimenez was given an overall performance rating of Exceeds Standards as she did a very good job. She reiterated that in this case in developing the performance review she referred to Rule 14, Section 3.b.5. which talks about looking at the employee's performance for the entire year. Consequently that is why Ms. Jimenez received the rating she received. She said she had seen improvement in Ms. Jimenez's performance but she believed it was very important to look at the entire rating period when rating her.

MOTION TO APPROVE THE COMMITTEE'S RECOMMENDATION MADE BY COMMISSIONER GRAHAM, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.

Items 2A, 2B, 2C, 2E and 2L were discussed here.

17. For Notation: Civil Service Commission Action regarding Appeal of Performance Evaluation by Erik Nealis.

Chair Ellis noted that the document presented for backup would be made part of Mr. Nealis' file.

MOTION TO DELETE ITEM 17 MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER PEÑA AND UNANIMOUSLY PASSED.

18. Discussion and Action on Miscellaneous Appeal filed by Edward DeBruhl reference Transit Route Supervisor Protests, C.S.C. Rule 9.8.

Mr. DeBruhl asked the Commission to look at the job specification for Transit Route Supervisor and believed Human Resources' question #13 should be thrown out altogether.

Chair Ellis asked reference the language in the specification which states "justly and impartially exercise delegated authority to lead..." He wondered if this was grammatically structured the way it was intended.

Terry Lee Scott, Director of Public Transit, said he believed the intent of the language was that the supervisors have to delegate authority to other supervisors, in particular chief coach operators, that they will do it in a justly and impartial manner.

Discussion.

Monica Puga, Human Resources, said that 67% of the people who took the test got the answer correct.

Commissioner Gezelius stated that if the question had said "delegate authority" it would have been a good question but it said "delegate responsibility."

Peter Fargo, Human Resources, told the Commissioners that the Civil Service Rules state that an applicant must make a specific point or objection to a specific question, action or procedure (Rule 9, Section 8, Paragraph F). He said that in his opinion Mr. DeBruhl was not specific. He told the Commission that a good question is 50% so this was an excellent question since only 3 people chose #4. When less than 50% answer correctly is when they start to scrutinize the questions.

MOTION TO DENY MR. DEBRUHL'S APPEAL ON QUESTION 13 MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER SCHWARTZ AND PASSED BY A VOTE OF 5 TO 3.

Ayes: Commissioners Peña, Martinez, Boureslan, Schwartz, Scott

Nays: Commissioners Graham, Gezelius, Ruck

Mr. DeBruhl detailed his reasons why he believed question 41 was wrong and should be thrown out.

Discussion.

MOTION TO DENY MR. DEBRUHL'S APPEAL ON QUESTION 41 MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER SCHWARTZ AND UNANIMOUSLY PASSED.

Mr. DeBruhl detailed his reasons why he believed question 46 was wrong and should be thrown out.

Mr. Scott told the Commission that the bus drivers are allowed to continue picking up passengers even when the farebox is not working, until the problem is resolved.

Discussion.

MOTION TO DENY MR. DEBRUHL'S APPEAL ON QUESTION 46 MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER SCHWARTZ AND UNANIMOUSLY PASSED.

A recess was taken here.

Items 22, 23 and 24 were addressed here.

19. Discussion and Action on Appeal of Disqualification to take Examination and/or Removal of Name from Eligible List in accordance with C.S.C. Rule 8.1.d.1.:

A. Chavez, Ernesto – Cashier II

Mr. Chavez was present. Chair Ellis read the specifics of the appellant's disqualification.

Mr. Chavez stated that he neglected to submit his experience with his application because he believed Human Resources had his resume on file, he told the Commission that he has been working in office situations since he was 16 years old. He said every job he has had has dealt with money and inventories, he believed he was qualified and requested the Commission approve his appeal.

MOTION TO APPROVE ITEM 19A MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.

B. Garcia, Claudia – Rideshare Program Coordinator

Ms. Garcia was present. Chair Ellis read the specifics of the appellant's disqualification.

Ms. Garcia felt she qualified for this position. She detailed her current work experience and how her current job should qualify her for this as she works with marketing and public relations and has done this work for seven years.

Monica Puga, Human Resources analyst, stated that the duties that Ms. Garcia said she was performing were not mentioned in the job duties of her job description. Ms. Puga checked Ms. Garcia's file to see if there was any documentation to show that she had possibly been worked out of specification but there wasn't.

Discussion.

MOTION TO APPROVE ITEM 19B MADE BY COMMISSIONER BOURESAN, SECONDED BY COMMISSIONER MARTINEZ AND PASSED BY A VOTE OF 7 TO 1.

Ayes: Commissioners Peña, Graham, Martinez, Gezelius, Boureslan, Scott, Ruck

Nays: Commissioner Schwartz

Before adjournment of the meeting Ms. Thomas requested that Item 19B be reconsidered.

MOTION TO RECONSIDER ITEM 19B MADE BY COMMISSIONER SCHWARTZ, SECONDED BY COMMISSIONER GEZELIUS AND PASSED BY A VOTE OF 5 TO 3.

Ayes: Commissioners Peña, Martinez, Gezelius, Schwartz, Scott

Nays: Commissioner Boureslan, Ruck, Graham

(Commissioner Graham left before voting on Item 19B for the second time.)

Ms. Thomas stated that the reason for this request was that Ms. Garcia was currently a Clerk in the Rideshare Division of Sun Metro, a GS 7. The experience required was that of a PM 75, her file doesn't show any experience from working out of class and there is no evidence that she has been performing the duties she says she has been performing. Ms. Thomas said she didn't believe Ms. Chavez had been doing duties comparable to a PM 75 in the past seven years.

Chair Ellis said the problem he had right now was that the employee had left believing her appeal had been approved.

Commissioner Boureslan believed her college degree should equate to some experience.

Assistant City Attorney Lupe Cuellar reminded the Commission that they approved these guidelines and if they believed the guidelines needed amending they could certainly amend them.

MOTION TO TABLE ITEM 19B MADE BY COMMISSIONER MARTINEZ, SECONDED BY COMMISSIONER PEÑA AND PASSED BY A VOTE OF 5 TO 2.

Ayes: Commissioners Peña, Martinez, Gezelius, Schwartz, Scott

Nays: Commissioner Boureslan, Ruck

MOTION TO ADJOURN TO EXECUTIVE SESSION MADE BY COMMISSIONER MARTINEZ, SECONDED BY COMMISSIONER GEZELIUS AND UNANIMOUSLY PASSED.

The Commission retired into Executive Session at 10:06 p.m. to discuss Item 20, and reconvened for Open Session at 10:15 p.m.

MOTION TO ADJOURN EXECUTIVE SESSION AND RETURN TO REGULAR SESSION MADE BY COMMISSIONER GEZELIUS, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.

20. Discussion and Action on Appeal of Disqualification to take Examination and/or Removal of Name from Eligible List in accordance with C.S.C. Rules and Regulations:

Muñoz, Francisco – Building Maintenance Worker I(8.1.d.4.)

Mr. Muñoz was present. The matter was discussed in Executive Session. The following action was taken in Open Session.

MOTION TO APPROVE ITEM 20 MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER GEZELIUS AND PASSED BY A VOTE OF 6 TO 2.

Ayes: Commissioners Peña, Graham, Martinez, Gezelius, Schwartz, Ruck

Nays: Commissioner Boureslan, Scott

21. Discussion and Action on the Commission's Policy regarding the applicability of set-off's for back-pay awards after reinstatement from termination and certain time periods excluded from inclusion in set-off computation (Tabled 11/10/05).

This item was deleted concurrent with approval of the Consent Agenda.

22. Discussion and action regarding the Civil Service Commission's role with respect to new disciplinary grievance procedures for police officers contained in Article 21 of the Collective Bargaining Agreement between the City and the El Paso Municipal Police Officers Association, which is in the process of being approved by the parties.

Items 22, 23 and 24 were discussed prior to Items 19 and 20.

Elaine Hengen, Assistant City Attorney, told the Commission that over the past several months the City has been meeting with representatives of the police officer's association to negotiate a new 3-year collective bargaining agreement. This contract will be presented to City Council next Tuesday. She provided a copy of the new procedure dealing with appeals and explained the new procedure to the Commission.

Discussion.

Chair Ellis asked if there was a reason why the parties themselves couldn't administer the rotation of the arbitrators assigned to the cases instead of using the Commission.

Ms. Hengen said it was possible but the association had requested to use the Civil Service Commission's assistance with this respect.

Gerald Cichon, CLEAT Attorney, stated that for the last 18 months they have almost been unable to have hearings. He told the Commission that they have gone through six different attorneys assigned to this section during this transition period in the City Attorney's office. He explained why this new system in the agreement would work well. He said that justice delayed was justice denied and some of the appellants have been waiting almost 2 years for their case to be heard. He explained how this new process would save everybody money and time and how it would be beneficial to all. Mr. Cichon requested that the Commission approve this new system.

MOTION TO APPROVE ITEM 22 WHERE THE COMMISSION IS ACCEPTING THIS AGREEMENT UNDER ARTICLE 21 AND THAT THOSE DUTIES SPECIFICALLY BE ASSIGNED TO THE

COMMISSION RECORDER FOR EXECUTION, MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER GEZELIUS AND UNANIMOUSLY PASSED.

23. Discussion and Action on amending Rule 14 Efficiency Ratings, Section 7 Appeals.

Chair Ellis commented that this item may have been set in motion by cases such as 16B where employees have an overall rating of Exceeds Standards. He stated that no individual rating in the performance evaluation could adversely affect the employee because the overall rating is Exceeds Standards, which means they would qualify for a merit increase. He reviewed the backup provided and stated that including timelines in the rule would be helpful, these are timelines in which employees need to file their appeals of performance evaluations.

Commissioner Ruck believed they needed to hear from the employees and the City on their thoughts about this issue.

Joyce Wilson, City Manager, believed that for someone to be appealing one item on their evaluation even though they have an Exceeds Standards overall was a tremendous amount of time and effort. She told the Commission she couldn't even count the hours that were spent administratively before it got to the Commission, and then the time the Commission spent on it, over one line item. She said going forward she was instituting a management policy that all managers are going to have 360's. She explained that a 360 evaluation was where there was a peer review, a subordinate review and a supervisor's review. She said that if they would have done a 360 on this employee it would have validated the one line item or it would have never gotten to CSC. She said the same would apply for PE's rated competent or less than competent, a 360 would provide better documentation and backup to substantiate it or refute it. She told the Commission she supported the amendment.

Bill Arballo, AFSCME Local 59, stated that regardless of what rating the employee gets they should have recourse.

Discussion.

MOTION TO TABLE ITEM 23 TO THE SECOND MEETING IN JANUARY MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER GEZELIUS PASSED BY A VOTE OF 7 TO 1.

Ayes: Commissioners Peña, Graham, Martinez, Gezelius, Schwartz, Scott, Ruck

Nays: Commissioner Boureslan

24. Discussion and Action on Approval of Hearing Officer's Invoice:

Palafox, Patricia – Dated 12/04/04 – November 2005

MOTION TO APPROVE ITEM 24 MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER SCOTT AND UNANIMOUSLY PASSED.

Item 19B was reconsidered here.

THERE BEING NO FURTHER BUSINESS BEFORE THE COMMISSION, A MOTION TO ADJOURN WAS MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.

THE MEETING ADJOURNED AT 10:24 P.M.


WILLIAM J. ELLIS, C.S.C. CHAIR


LINDA BALL THOMAS, C.S.C. SECRETARY


DATE APPROVED